

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

DAWNUELL KELLY,

Plaintiff,

v.

AAA Bowls Unlimited, Inc., a Washington
Corporation, dba SKYWAY PARK BOWL;
OFFICER ALEX QUIRT and “JANE DOE”
QUIRT, husband and wife, and the marital
community composed thereof; and MARCUS
HUMPHREY and “JANE DOE” HUMPHREY,
husband and wife, and the marital community
composed thereof,

Defendants.

CASE NO. C04-2214C

ORDER

This matter comes before the Court on the Plaintiff’s Motion to Compel Defendant’s Production of Documents (Dkt. No. 18). Having reviewed the materials submitted by the parties and determined that oral argument is not necessary, the motion is GRANTED, subject to the conditions of this order and for the reasons set forth below.

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1 **I. BACKGROUND**

2 Plaintiff filed this action on October 27, 2004 alleging that Defendants had violated his civil rights
3 and had unlawfully arrested and imprisoned him. (*See* Pl.’s Compl.) On February 3, 2005, Plaintiff sent
4 Requests for Production to Defendant Skyway Park Bowl (“Skyway”), requesting the job applications of
5 the security officers who detained Plaintiff and the incident reports relating to similar detentions at
6 Skyway by those security officers, Defendants Quirt and Humphrey. (Pl.’s Mot. Compel, Bucher Decl.,
7 Ex. at 27-41.) Skyway objected on the basis of protecting the privacy interests of the third parties
8 identified in the reports. (Pl.’s Mot. Compel 2-3.) Skyway indicated that the documents might be
9 produced under a protective order; however, Skyway never proposed such an order. (*Id.*) Plaintiff
10 acknowledged Skyway’s privacy concerns and sent a proposed protective order to Skyway’s counsel.
11 (*Id.*) Subsequent to several telephone conversations on the matter and after rejection of the Plaintiff’s
12 proposed protective order, Skyway’s counsel indicated that the documents would not be provided even
13 under a protective order. (*Id.*) Defense counsel suggested Plaintiff bring the matter before the Court (*Id.*
14 at 3), which Plaintiff has done in this Motion to Compel Production filed on July 21, 2005.

15 **II. ANALYSIS**

16 *A. Production of Documents*

17 If a party fails to respond or objects to a request for production of documents, the party
18 submitting the request may move for an order to compel production under Fed. R. Civ. P. 37(a). *See*
19 Fed. R. Civ. P. 34(b). Skyway objects to the Plaintiff’s requests on the grounds that production of the
20 documents requested would violate the privacy interests of the third parties named in them. This
21 objection is not sufficient to completely prevent the documents from being produced.

22 Skyway makes no arguments against producing the job applications of the security officers who
23 detained the Plaintiff. No third party privacy interest will be violated if the job applications are produced,
24 so no protective order is necessary regarding the job applications. Further, the social security numbers
25 and birthdates of the officers can be redacted without impacting the usefulness of the documents.

1 Plaintiff does not object to the redaction of the officers' social security numbers and birthdates. (Pl.'s
2 Mot. Compel 3 n.1.) Therefore, Plaintiff's motion to compel production of the job applications of the
3 security officers who detained the Plaintiff is GRANTED, subject to the terms of this order.

4 Skyway's privacy objection to the production of the incident reports filed by the security officers
5 does have some merit. However, this privacy interest is insufficient to completely prevent discovery of
6 the requested documents.

7 The resolution of a privacy objection requires balancing the need for the information sought
8 against the privacy right asserted. *Soto v. City of Concord*, 162 F.R.D. 603, 616 (N.D. Cal. 1995). The
9 Plaintiff's need for the incident reports outweighs any invasion of the privacy of third parties, especially
10 under the limitations of this order. The Plaintiff's need for the incident reports is great. Further, "in civil
11 rights cases against police departments, plaintiffs cannot usually obtain information of comparable quality
12 from any other source." *See id.* at 616-17. The information contained in the incident reports is not
13 available from any other source, particularly the names, pictures, and contact information of those
14 detained, the circumstances under which they were detained (i.e., the substance of the incident reports),
15 and the names and contact information of any witnesses. The only argument in favor of protecting the
16 privacy of third parties is that the information contained in the incident reports might embarrass them.
17 While the cases cited by the Defendant support the proposition that privacy interests of third parties
18 should be accounted for in discovery disputes, none of those cases support an absolute ban on the
19 production of much-needed documents.¹

20
21 ¹*See Perry v. State Farm Fire and Cas. Co.*, 734 F.2d 1441, 1447 (11th Cir. 1984) (denial of
22 request for production not error where requesting party had no real need for the information); *Breed v.*
23 *United States Dist. Court N.D. Cal.*, 542 F.2d 1114, 1116 (9th Cir. 1976) (limiting exposure to the
24 documents to those employed by party's counsel); *Soto*, 162 F.R.D. at 617 (compelling discovery subject
25 to protective order); *Cook v. Yellow Freight Sys., Inc.*, 132 F.R.D. 548, 552 (E.D. Cal. 1990) (limiting
discovery to names and addresses of employees and their employment records subject to their consent);
Kelly v. City of San Jose, 114 F.R.D. 653, 672 (N.D. Cal. 1987) (compelling discovery subject to
protective order); *Rubin v. Regents of Univ. of Cal.*, 114 F.R.D. 1, 4 (N.D. Cal. 1986) (denying motion
to reconsider order compelling discovery).

1 This order reaches the appropriate balance between the Plaintiff's need for information and the
2 privacy interests of third parties. Information unrelated to the Plaintiff's claims, such as social security
3 numbers, birthdates, and driver's license and license plate numbers, can be redacted. The privacy of third
4 parties can be protected further by ordering the Plaintiff to use the reports only for purposes of this
5 litigation, to not share them with anyone outside his counsel's office, and to return the copies of the
6 reports to Skyway at the conclusion of the case. *See Soto*, 162 F.R.D. at 617 (including similar terms in
7 protective order); *Martinez v. City of Stockton*, 132 F.R.D. 677, 685 (E.D. Cal. 1990) (same).
8 Therefore, Plaintiff's motion to compel production of the incident reports is GRANTED, subject to the
9 terms of this order.

10 *B. Attorney's Fees*

11 Plaintiff is entitled to attorney's fees he has incurred in filing this motion to compel. Attorney's
12 fees should not be granted if the opposing party's nondisclosure, response, or objection is substantially
13 justified. Fed. R. Civ. P. 37(a)(4)(A). An opposing party's failure to adequately respond to discovery is
14 substantially justified if there is a genuine dispute or if reasonable people could differ as to whether the
15 party must comply. *Pierce v. Underwood*, 487 U.S. 522, 565 (1988). Skyway claims its refusal to
16 produce the incident reports was substantially justified based on its concerns regarding the privacy of
17 third parties. However, there is no genuine dispute about Skyway's duty to produce the documents
18 requested in some form, as no reasonable person would think Skyway's position—refusing to produce
19 the incident reports under any circumstance—was correct based on the case law cited by Skyway. *See*
20 *supra* note 1. While Skyway may have been substantially justified in protecting third party privacy
21 interests, it was not substantially justified in refusing to produce the reports at all. Plaintiff drafted a
22 proposed protective order and sent it to Skyway, but Skyway did not consent to it and did not propose its
23 own protective order. But for Skyway's unjustified refusal to turn over any information contained in the
24 incident reports, the Plaintiff would not have had to file this motion. *See Rivers v. Am. Exp. Centurion*
25 *Serv. Corp.*, 184 F.R.D. 670, 671-72 (M.D. Fla. 1998) (plaintiff's filing motions to compel and related

1 costs attributed to defendant even if defendant acted in good faith in failing to produce responsive
2 documents). Therefore, the Plaintiff's request for attorney's fees incurred in filing this motion is
3 GRANTED.

4 For these reasons, it is hereby ORDERED:

5 (1) Plaintiff's motion to compel production of documents is GRANTED.

6 (2) Defendant Skyway shall produce the job applications of Defendants Quirt and Humphrey,
7 subject to the protections of this order.

8 (3) Defendant shall produce incident reports, trespass reports, employee notes, or other
9 documents created between the years 1999 and 2004 by Defendants Quirt and Humphrey relating to
10 incidents resulting in the detention of members of the public at Skyway, subject to the protections of this
11 order.

12 (4) Defendant shall omit from the documents produced pursuant to Orders 2 and 3 information
13 relating to the Social Security Numbers, birthdates, and driver's license and license plate numbers all
14 parties referenced therein. No other omissions shall be made.

15 (5) Materials produced pursuant to Orders 2 and 3 may be disclosed only to the following
16 persons: (a) counsel for any party to this action; (b) those assisting counsel for any party to this action;
17 (c) court personnel engaged in proceedings that are necessarily incidental to preparation for the trial of
18 this action; (d) any outside expert or consultant retained in connection with this action; and (e) witnesses,
19 who may have the materials disclosed to them during deposition proceedings but may not leave the
20 deposition with copies of the materials.

21 (6) Plaintiff shall only use the documents produced pursuant to Order 3 for purposes of this
22 litigation.

23 (7) Plaintiff shall return all documents produced pursuant to Order 3 to Defendant Skyway at the
24 conclusion of this litigation.

25 (8) Defendant shall cause to be paid to Plaintiff \$3,710.00 as compensation for the fees Plaintiff

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1 incurred in filing this motion.

2 SO ORDERED this 27th day of September, 2005.

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4 

5 John C. Coughenour

6 United States District Judge